



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Holly True, Senior Operations Manager
Indiana American Water Company
Northwest, Ogden Dunes Facility
Portage, Indiana
Holly.True@amwater.com

Re: Finding of Violation
Indiana American Water Company
Northwest, Ogden Dunes Facility
Portage, Indiana

Dear Holly True:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Indiana American Water Company ("IN-AWC" or "you") under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a). We find that you are violating certain provisions of the Chemical Accident Prevention Provisions (CAPP), codified at 40 C.F.R. Part 68, as well as Section 112(r)(7)(E) of the Clean Air Act, 42 U.S.C. § 7412(r)(7)(E), at your Northwest, Ogden Dunes Facility, located in Portage, Indiana.

Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7412(a)(3), gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Vicky Mei. You may call Vicky Mei at (312) 353-2054 or email them at Mei.Vicky@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Nathan Frank
Supervisor, Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure

cc: Janusz Johnson, Chief
Air Compliance Branch, Office of Air Quality
Indiana Department of Environmental Management
JJOHNSON@idem.IN.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Indiana American Water Company–
Northwest, Ogden Dunes Facility
Portage, Indiana**

Proceedings Pursuant to
the Clean Air Act,
42 U.S.C. §§ 7401 et seq.

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FINDING OF VIOLATION

EPA-5-22-IN-03

FINDING OF VIOLATION

The U.S. Environmental Protection Agency finds that Indiana American Water Company (“IN-AWC” or “Indiana American Water”) is violating Section 112(r)(7)(E) of the Clean Air Act (Act), 42 U.S.C. § 7412(r)(7)(E), and certain regulatory provisions set forth in the Chemical Accident Prevention Provisions (CAPP), codified at 40 C.F.R. Part 68, at its Northwest, Ogden Dunes facility, located in Portage, Indiana. The statutory and regulatory authority, as well as a description of the specific violations, are set forth below:

Statutory and Regulatory Authority

I. Clean Air Act, Subsection 112(r)

1. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

2. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

3. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

4. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

5. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan (RMP) to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

6. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which is codified, as amended, at 40 C.F.R. § 68.130.

7. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which is codified, as amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (CAPP). *See* 84 Fed. Reg. 69834 (Dec. 19, 2019).

8. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

II. Chemical Accident Prevention Provisions

A. Applicability

9. Section 68.10(a) of CAPP provides, in pertinent part, that the owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under 40 C.F.R. § 68.115, shall comply with the requirements of CAPP no later than the date on which a regulated substance is first present above a threshold quantity in a process.

10. Section 68.3 of CAPP provides that “regulated substance” means any substance listed pursuant to Section 112(r)(3) of the Act at 40 C.F.R. § 68.130.

11. Table 1 at Section 68.130(a) of CAPP lists chlorine as a regulated toxic substance with a threshold quantity of 2,500 pounds.

12. Section 68.3 of CAPP provides that “process” means “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” For purposes of this definition, a single process includes “any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release” A “covered process” means “a process that has a regulated substance present in more than a threshold quantity as determined under 40 C.F.R. § 68.115.”

13. Section 68.10(i) of CAPP provides, in pertinent part, that a covered process is subject to Program 3 requirements if the process does not meet the requirements of 40 C.F.R. § 68.10(g) and if either of the following conditions is met: the process is in NAICS code 32211, 32411, 32511, 325181, 325188, 325192, 325199, 325211, 325311, or 32532; or the process is subject to the U.S. Occupational Safety and Health Administration (OSHA) process safety management standard, 29 CFR § 1910.119.

14. Section 68.12(a) and (d) of CAPP identify CAPP requirements that the owner or operator of a stationary source with a process subject to Program 3 shall meet, which include, among other provisions, requirements regarding hazard assessment (CAPP, Subpart B), the Program 3 prevention program (CAPP, Subpart D), emergency response (CAPP, Subpart E), and the submittal of an updated RMP (CAPP, Subpart G).

B. Process Safety Information

15. Section 68.65 of CAPP provides, in pertinent part, that before conducting any process hazard analysis required by CAPP, the owner or operator of a stationary source with a process subject to Program 3 shall complete a compilation of written process safety information pertaining to the hazards of the regulated substances used or produced by the process, the technology of the process, and the equipment in the process, including at least the following:

- a. Section 68.65(c)(1) of CAPP:
 - i. Process chemistry (Section 68.65(c)(1)(ii); and
 - ii. An evaluation of the consequences of deviations (Section 68.65(c)(1)(v)).
- b. Section 68.65(d)(1) of CAPP:
 - i. Electrical classification (Section 68.65(d)(1)(iii));
 - ii. Relief system design and design basis (Section 68.65(d)(1)(iv));
 - iii. Ventilation system design (Section 68.65(d)(1)(v));
 - iv. Design codes and standards employed (Section 68.65(d)(1)(vi));
 - v. Material and energy balances for processes built after June 21, 1999 (Section 68.65(d)(1)(vii); and
 - vi. Safety systems (e.g., interlocks, detection or suppression systems) (Section 68.65(d)(1)(viii)).

16. Section 68.65(d)(2) of CAPP provides that the owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

C. Process Hazard Analysis

17. Section 68.67 of CAPP provides, in pertinent part, that the owner or operator of a stationary source with a process subject to Program 3 shall:

- a. Address, in the process hazard analysis, stationary source siting; human factors; and a qualitative evaluation of a range of the possible safety and health effects of failure of controls (Section 68.67(c)(5-7));
- b. Have the process hazard analysis be performed by a team with expertise in engineering and process operations, experience and knowledge specific to the process being

evaluated, and knowledge in the specific process hazard analysis methodology being used (Section 68.67(d));

- c. Establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions (Section 68.67(e));
- d. At least every five (5) years after the completion of the initial process hazard analysis, have the process hazard analysis be updated and revalidated by a team meeting the requirements in 40 C.F.R. § 68.67(d), to assure that the process hazard analysis is consistent with the current process (Section 68.67(f)); and
- e. Retain process hazards analyses and updates or revalidations for each process subject to Program 3, as well as the documented resolution of recommendations described in 40 C.F.R. § 68.67(e) for the life of the process (Section 68.67(g)).

D. Operating Procedures

18. Section 68.69(a) of CAPP provides, in pertinent part, that the owner or operator of a stationary source with a process subject to Program 3 shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information and that address the elements in 40 C.F.R. §§ 68.69(a)(2)(ii) and 68.69(a)(3)(ii-v), among other provisions.

19. Section 68.69(b) of CAPP provides that the operating procedures shall be readily accessible to employees who work or maintain a process.

20. Section 68.69(c) of CAPP provides that the operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

E. Training

21. Section 68.71(a)(1) of CAPP provides that each employee involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in 40 C.F.R. § 68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

22. Section 68.71(c) of CAPP provides that the owner or operator shall ascertain, verify, and record that each employee involved in operating a process has received and understood the training required by Section 68.71 of CAPP.

F. Mechanical Integrity

23. Section 68.73(b) of CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 shall establish and implement written procedures to maintain the ongoing integrity of process equipment, as identified at 40 C.F.R. § 68.73(a).

24. Section 68.73(c) of CAPP provides that the owner or operator of a stationary source with processes subject to Program 3 shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

25. Section 68.73(d)(1-4) of CAPP provides that inspections and tests shall be performed on process equipment which: follow recognized and generally accepted good engineering practices; are conducted at a frequency consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience; and are documented.

G. Compliance Audits

26. Section 68.79(a) of CAPP provides that the owner or operator of a stationary source with a process subject to Program 3 shall certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart D, Program 3 Prevention Program, at least every three years to verify that procedures and practices developed under Subpart D, referenced above, are adequate and are being followed.

27. Section 68.79(b) of CAPP provides that the compliance audit shall be conducted by at least one person knowledgeable in the process.

28. Section 68.79(d) of CAPP provides that the owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

H. Employee Participation

29. Section 68.83(b) of CAPP provides that the owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management required by CAPP.

30. Section 68.83(c) of CAPP provides that the owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under CAPP.

I. Emergency Response

31. Section 68.90(b)(1) and (4) provide, in pertinent part, that the owner or operator of a non-responding stationary source, whose employees will not respond to accidental releases of regulated substances, need to include the stationary source in the community emergency response plan developed under 42 U.S.C. 11003 and to perform the annual emergency response coordination activities required under 40 C.F.R. § 68.93.

32. Section 68.93(a) of CAPP provides, in pertinent part, that the owner or operator shall coordinate response needs with local emergency planning and response organizations at least annually, and more frequently if necessary, to address changes: at the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan.

33. Section 68.93(c) of CAPP provides, in pertinent part, that the owner or operator shall document coordination with local authorities, including: the names of individuals involved and their contact information (phone number, email address, and organizational affiliations); dates of coordination activities; and nature of coordination activities.

Statement of Facts and Explanation of Violations

A. Applicability

34. Indiana American Water treats and chlorinates water at its water treatment plant, Northwest, Ogden Dunes (the "Facility"), at 84 Diana Road, Portage, Indiana.

35. The Facility maintains a maximum inventory of 36,000 pounds of the regulated toxic substance chlorine as liquified compressed gas, as determined under 40 C.F.R. § 68.115, which exceeds the threshold quantity of 2,500 pounds of chlorine as set forth at Table 1 to 40 C.F.R. § 68.130.

36. The Facility's covered process constitutes of the usage, storage, handling, and movement of chlorine from the cylinders, through the chlorine pipes, to the injectors.

37. The Facility's worst-case release assessment conducted under Subpart B of Part 68 and 40 C.F.R. § 68.25 determined that the distance to the toxic endpoint for chlorine (0.0087 mg/L, as listed in Appendix A of Part 68) is greater than the distance to any public receptor. The Facility therefore does not meet the eligibility requirements of 40 C.F.R. § 68.10(g) for Program 1.

38. The Facility's covered process is subject to the Occupational Safety and Health Administration (OSHA) process safety management standard, 29 C.F.R. § 1910.119.

39. Based on Paragraphs 35 through 38 the Facility has a covered process that is subject to requirements of Chemical Accident Prevention Provisions in accordance with 40 C.F.R. § 68.10(a) and the requirements of Program 3 in accordance with 40 C.F.R. § 68.10(i)

40. On December 6 and 7, 2021, EPA conducted an announced inspection of the Facility.

41. IN-AWC provided numerous documents for the December 6 and 7, 2021 inspection. These documents were related to various aspects of its Program 3 requirements under CAPP including: Program 3 prevention program and emergency response.

B. Process Safety Information

42. Based on documentation provided to EPA inspectors, IN-AWC did not complete a compilation of written process safety information pertaining to the technology of the process and the equipment in the process that includes: [1] the process chemistry; [2] an evaluation of the consequences of deviations; [3] electrical classification; [4] relief system design and design basis; [5] ventilation system design; [6] design codes and standards employed; [7] material and energy balances for processes build after June 21, 1999; and [8] safety systems (e.g., interlocks, detection or suppression systems). This is in violation of 40 C.F.R. §§ 68.65(c)(1)(ii, v) and 68.65(d)(1)(iii-viii).

43. Under 40 C.F.R. § 68.65(d)(2), “[t]he owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.” Under recognized and generally accepted good engineering practices, pipes containing chlorine should be labeled. During the December 6 and 7, 2021 inspection, EPA inspectors observed that IN-AWC had not labeled the contents and flow direction in the chlorine pipes in the chlorinator room. By failing to adequately label the pipes, IN-AWC is in violation of 40 C.F.R. § 68.65(d)(2).

C. Process Hazard Analysis

44. The Facility’s September 10, 2020 process hazard analysis (PHA) failed to include: [1] factors listed in 40 C.F.R. § 68.67(c)(5-7), [2] the involvement of a team with the appropriate technical background; and [3] a system to address, document, and communicate the timely resolution of the team’s findings and recommendations. These are violations of 40 C.F.R. § 68.67(c)(5-7), (d), and (e).

45. IN-AWC provided to EPA inspectors the two most recent PHAs, dated July 2, 2013, and September 10, 2020. IN-AWC failed to update and revalidate the PHA at least every five years by a team meeting the requirements of 40 C.F.R. § 68.67(d) to assure that the PHA is consistent with the current process. This was in violation of 40 C.F.R. § 68.67(f).

46. IN-AWC did not provide documentation of the initial PHA to EPA Inspectors. IN-AWC failed to retain PHAs and updates or revalidations, as well as the documented resolution of recommendations described in 40 C.F.R. § 68.67(e) for the life of the process. This was in violation of 40 C.F.R. § 68.67(g).

D. Operating Procedures

47. Based on documentation provided to EPA inspectors, IN-AWC did not develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with process safety information and that address the following elements: steps required to correct or avoid deviation; the personal protective equipment precautions necessary; control measures to be taken if physical contact or airborne exposure occurs; control of hazardous chemical inventory levels; and any special or unique hazards. These are in violation of 40 C.F.R. §§ 68.69(a)(2)(ii) and 68.69(a)(3)(ii-v).

48. The Facility’s operating procedures are located at the Indiana American Water, Northwest, Borman Park facility nearby and are not readily accessible to employees who work or maintain a process at the Indiana American Water, Northwest, Odgen Dunes facility, other than “Chlorine Tank Change” operating procedures that are posted on the wall of the Chlorine Room. This is in violation of 40 C.F.R. § 68.69(b).

49. IN-AWC did not provide to EPA inspectors documentation of annual certification that the operating procedures are current and accurate. This is in violation of 40 C.F.R. § 68.69(c).

E. Training

50. IN-AWC documented the initial training of only one employee and did not provide initial training documentation for other employees. IN-AWC did not provide documentation of training of employees in an overview of the process and in the operating procedures of the process prior to each

employee being involved in operating a newly assigned process, as required by 40 C.F.R. § 68.69. This was in violation of 40 C.F.R. § 68.71(a)(1).

51. IN-AWC documented for only one employee the means used to verify that the employee understood the training required by 40 C.F.R. § 68.71. IN-AWC did not record that each employee involved in operating a process had received and understood the training required by Section 68.71 of the CAPP. This was in violation of 40 C.F.R. § 68.71(c).

F. Mechanical Integrity

52. An Indiana American Water employee maintains the on-going integrity of the process equipment of every Indiana American Water facility in Indiana, and the on-site employees at the Facility rebuild the chlorine regulators. During the inspection, IN-AWC did not provide written procedures to maintain the ongoing integrity of process equipment to EPA inspectors, as identified at 40 C.F.R. § 68.73(a). This is in violation of 40 C.F.R. § 68.73(b).

53. IN-AWC verbally relayed to EPA inspectors that the Indiana American Water employee, who maintains the on-going integrity of the process equipment for the Indiana facilities, trains two Ogden Dunes Facility mechanics to rebuild the chlorine regulators. IN-AWC did not provide documents on training each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner. This was in violation of 40 C.F.R. § 68.73(c).

54. IN-AWC provided service reports for maintenance work orders. IN-AWC did not provide documentation that inspections and tests are performed on process equipment; follow recognized and generally accepted good engineering practices; and are conducted at a frequency consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience. This was in violation of 40 C.F.R. § 68.73(d)(1-4).

G. Compliance Audits

55. IN-AWC provided to EPA inspectors the two more recent compliance audits, dated July 7, 2017, and September 3, 2020. IN-AWC failed to certify that they had evaluated the Facility's compliance with the provisions of the Program 3 Prevention Program at least every three years to verify that procedures and practices developed under the Program 3 Prevention Program are adequate and are being followed, in violation of 40 C.F.R. § 68.79(a).

56. The Facility's September 3, 2020 compliance audit was not conducted by at least one person knowledgeable in the process. This was in violation of 40 C.F.R. § 68.79(b).

57. According to documents reviewed by EPA inspectors, IN-AWC failed to promptly determine and document an appropriate response to each of the findings of the September 3, 2020 compliance audit, and document that deficiencies have been corrected, in violation of 40 C.F.R. § 68.79(d).

H. Employee Participation

58. IN-AWC developed a written plan of action regarding the implementation of the employee participation required by Section 68.83 of CAPP but has not implemented the plan. IN-AWC

has not consulted with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management required by CAPP. This is in violation of 40 C.F.R. § 68.83(b).

59. IN-AWC did not provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under CAPP. This is in violation of 40 C.F.R. § 68.83(c).

I. Emergency Response

60. IN-AWC verbally relayed to EPA inspectors that it is not aware if the Facility is included in the community emergency response plan developed under 42 U.S.C. 11003 and that IN-AWC has never performed the annual emergency response coordination activities required under 40 C.F.R. § 68.93 for the Facility. The Facility failed to be included in the community emergency response plan and to perform the annual emergency response coordination activities. These are in violation of 40 C.F.R. § 68.90(b)(1) and (4).

61. IN-AWC failed to coordinate response needs and to document coordination with local emergency planning and response organizations at least annually, and more frequently if necessary, to address changes: at the stationary source; in the stationary source's emergency response and/or emergency action plan; and/or in the community emergency response plan. These are in violation of 40 C.F.R. § 68.93(a) and (c).

J. Violations of the Clean Air Act

62. Pursuant to Section 112(r)(7)(E) of the Act, the above-described violations of the regulations and requirements of 40 C.F.R. Part 68, are violations of the Act.

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division